

STATE OF INDIANA )  
 )  
COUNTY OF MARION )

BEFORE THE INDIANA OFFICE OF  
ENVIRONMENTAL ADJUDICATION

IN THE MATTER OF: )  
 )  
OBJECTION TO THE ISSUANCE OF )  
PART 70 OPERATING PERMIT RENEWAL )  
039-24536-00538 TO VIM RECYCLING, INC. )  
ELKHART, INDIANA )  
 )  
BAUGO NORTH NEIGHBORHOOD GROUP )  
by its Representative Members, JOYCE )  
BELLOWS, WAYNE STUTSMAN, BARBARA )  
STUTSMAN and EDGAR BELLOWS )  
 )  
Petitioners, )  
 )  
VIM RECYCLING, INC., )  
 )  
Respondent/Permittee )  
 )  
INDIANA DEPARTMENT OF )  
ENVIRONMENTAL MANAGEMENT, )  
 )  
Respondent )  
 )

CAUSE NO:

**PETITION FOR ADMINISTRATIVE  
REVIEW AND STAY OF EFFECTIVENESS**

Petitioners, Baugo North Neighborhood Group by its representative members Joyce Bellows, Wayne Stutsman, Barbara Stutsman and Edgar Bellows (“Neighborhood Group”), and its individual members who live near the VIM Recycling facility in Elkhart, Indiana (the “VIM Site”), by and through their counsel, hereby submit a Petition for Administrative Review and Stay of Effectiveness of the Part 70 Operating Permit Renewal No. 039-24536-00538 (the “Permit”) issued to VIM Recycling, Inc. by Respondent Indiana Department of Environmental Management (“IDEM”) for the VIM Site. A copy of the Commissioner’s Notice of Decision is attached hereto as Exhibit A.

The permittee, VIM Recycling, Inc. ("VIM") owns and operates a stationary landscape mulch, animal bedding and wood for fuel manufacturing operation at the VIM Site. VIM is a stationary source and required to have a Part 70 permit by 326 IAC 2-7-2 because it is a major source, as defined in 326 IAC 2-7-1(22) and it is a source in a source category designated by the United States Environmental Protection Agency (U.S. EPA) under 40 CFR 70.3.

This petition is filed pursuant to IC §§ 13-15-6, *et seq.*, 4-21.5-3-5 and 4-21.5-3-7 and IAC Title 315 *et seq.* In support thereof, the Petitioners state as follows:

### **Interest of Petitioners**

1. Petitioner, Baugo North Neighborhood Group, is a community grass roots group comprised of ninety-nine (99) individuals and a business, including their representative members, Joyce Bellows, Edgar Bellows, Barbara Stutsman and Wayne Stutsman, who live, work and recreate in Elkhart, Indiana in close proximity to the VIM Site and are adversely impacted by air emissions from VIM's activities. Some of these members' households include children, elderly citizens, and others who are particularly sensitive to the health impacts of the air pollution that has been and will continue to be emitted by VIM's operations at the VIM Site. These members and their households, particularly their sensitive members, will continue to suffer significant harm if air emissions from the VIM Site are not limited in the manner requested in this petition. The Neighborhood Group by its attorney submitted comments to IDEM during the public comment period raising issues addressed in this petition (the "Comments"). In addition, numerous members of the Neighborhood Group presented comments, oral and written, at the hearing held by IDEM concerning the Permit on November 20, 2008 (the "Hearing").
2. Petitioners, Joyce Bellows, Edgard Bellows, Wayne Stutsman and Barbara Stutsman, are citizens of Indiana who own property and reside in Elkhart, Indiana near the VIM Site. Petitioners' health and well-being as well as other pecuniary, property and personal interests of Petitioners have

been and will continue to be adversely impacted by air emissions from VIM's operations if those emissions are not limited in the manner requested in this Petition. Petitioner Wayne Stutsman and Joyce Bellows submitted comments at the hearing held by IDEM concerning the Permit on November 20, 2008.

3. Respondent IDEM is an agency of the State of Indiana, and is charged with protecting and improving the air resources of the State through the Office of Air Quality. IDEM administers the issuance of permits concerning air quality in the State of Indiana and makes decisions regarding the issuance air pollution permits, including the Permit at issue in this appeal. Its decisions are subject to appeal to the Office of Environmental Adjudication (OEA).

4. The VIM Site is owned, constructed and operated by Respondent VIM.

#### **Jurisdiction**

5. The Office of Environmental Adjudication (OEA) has jurisdiction to decide this appeal according to IC 13-15-6-3 and revoke or modify this Permit in accordance with IC 13-15-7-1. The OEA has *de novo* review of the Permit.

#### **Factual and Procedural Background**

6. On October 12, 2008, IDEM published notice of its intent to issue the Permit, and informed interested parties that a Hearing would be held November 20, 2008 and that comments concerning the draft permit would be accepted until December 1, 2008. The draft Permit was accompanied by a draft Technical Support Document ("TSD") that set forth IDEM's rationale for the conditions in the draft Permit.

7. On April 8, 2009, IDEM issued its Notice of Decision to approve the final Permit to VIM. On April 20, 2009, Petitioners, as interested parties received IDEM's Notice of Decision including a copy of the final permit and TSD issued to VIM and an Addendum to the TSD containing IDEM's response to comments received concerning the Permit.

8. This Petition is timely because the date of filing, April 29, 2009, is within fifteen (15) days from Petitioners' receipt of IDEM's Notice of Decision as required by IC 13-15-6-1(a).

9. VIM's operations at the VIM Site have been and will continue to emit large amounts of air pollutants that pose a threat to human health and welfare, including but not limited to particulate matter (PM/PM10 and PM2.5), nitrogen oxides (NO<sub>x</sub>), sulfur dioxide (SO<sub>2</sub>), carbon monoxide (CO), volatile organic compounds (VOCs) and hazardous air pollutants (HAPs). These pollutants will affect the health and welfare of Petitioners who are thus aggrieved by IDEM's decision to issue the Permit.

10. The Permit is inconsistent with the requirements of the Clean Air Act ("CAA") for the reasons specified herein. IDEM made numerous factual and legal errors in issuing the Permit, many of them reflected in its response to public comments. Petitioners respectfully request administrative review because the Permit, as issued, is legally deficient in numerous respects described below. Thus, Petitioners seek a stay of effectiveness of the Permit, a hearing before the OEA, and a decision by the OEA to deny or rescind the Permit.

11. Pursuant to 315 IAC 1-3-2(4)(A) and (B), the environmental concerns and/or technical deficiencies of the Permit and Permit terms and conditions that would be appropriate to comply with the law are also set forth below.

#### **The Permit Allows Illegal Processing of Regulated Solid Waste**

12. 326 IAC 2-1.1-4 prohibits IDEM from issuing a permit that "allow[s] for the circumvention or violation of any federal law or regulation."

13. The federal Resource Conservation and Recovery Act (RCRA) prohibits "any solid waste management practice or disposal of solid waste . . . which constitutes open dumping." 42 USC § 6945. An "open dump" is defined as "any facility or site where solid waste is disposed of which is not a sanitary landfill which meets the criteria promulgated under section 6944 of this title and which is not a facility for disposal of hazardous waste." 42 USC § 6903(14). "Disposal" means "the discharge,

deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.”<sup>42</sup> USC §6903(3); 40 CFR§ 260.10.

14. Any person who constructs or operates a solid waste processing facility . . . shall have a solid waste processing facility permit pursuant to 329 IAC 11-9-1. A "solid waste processing facility" includes: "a transfer station, a solid waste baler; a solid waste shredder; a resource recovery system; a composting facility; a garbage grinding facility; a medical or infectious waste treatment facility; a solid waste solidification facility that is not located on an operating permitted land fill; a facility that uses plasma arc or another source of heat to treat solid waste." I.C. §13-11-2-212; 329 IAC 11-2-43.

15. In September of 2000, VIM Defendants began storing ground gypsum outdoors despite repeated warnings by IDEM inspectors that "open aggregate piles must consist of only landscape mulch and scrap wood." IDEM inspectors repeatedly reported that large piles of gypsum and other solid waste materials were being stored outdoors and repeatedly warned VIM that "this material cannot be stored outside and must be removed." Nevertheless, VIM continued to amass and dump gypsum, industrial scrap wood, treated and untreated lumbar (e.g. plywoods, particle boards, veneered woods), plastic, steel, glass, carpet, scrap components from the manufacture and demolition of mobile homes, and bio-solids from the City of Elkhart's wastewater treatment plant on bare ground in very large, outdoor waste piles.

16. On August 2, 2005, IDEM's Office of Land Quality (OLQ) conducted a multi-media inspection of the VIM Site and determined that waste piles of “C grade” wood were being stored in such a way as to constitute "disposal of solid waste" and that the “C grade” solid waste pile constitutes an “open dump.”

17. On December 17, 2008, OLQ sent VIM a letter "clarify[ing] the regulatory status of activities at the VIM [Site], relative only to the state's solid waste regulations" as follows:

Three different waste materials exist at the facility. "A" waste which consist of trees, brush, recently live wood and uncontaminated lumber, which is ground up and used as mulch; "B" Waste which is a mixture of wood scraps containing laminated wood and plywood collected from various manufacturers in the area that is ground up to make animal bedding; and "C" waste which is "B" Waste that is no longer suitable for use in making animal bedding, and which was proposed for use under a Marketing and Distribution permit.

All of the wastes identified above are subjected to some level of grinding and processing at your facility. Currently, the processing of "A" Waste is excluded from the Solid Waste Regulations under 329 IAC 11-3-1(7), so no solid waste permits or approvals are needed for this activity.

***As has been relayed to you in previous meetings with IDEM staff, processing of "B" Waste does require the issuance of a Solid Waste Processing Permit under 329 IAC 11. To date, the Office of Land Quality has not received an application for a Solid Waste Processing Permit for your facility. It is expected that you will cease and desist from grinding "B" Waste at your facility until the appropriate permit is obtained. If the processed "B" Waste is going to be utilized as animal bedding you must also obtain a beneficial use approval from IDEM under 329 11-3-1(15).***

Grinding and processing of "C" Waste was going to be addressed under the Marketing and Distribution for which you applied. Given ***that permit has been denied*** any grinding or processing of "C" Waste will also require the issuance of a Solid Waste Processing Permit. It is expected that you ***will cease and desist from grinding "C" Waste at your facility until the appropriate permit is obtained.***

(emphasis added).

18. Despite RCRA's prohibition against open dumping and OLQ's directive to cease and desist processing of "B" and "C" wastes without a solid waste processing permit, the renewal Permit allows VIM to grind and screen "B" waste material. Likewise, the TSD states that VIM is "temporarily allow[ed] . . . to shred 'C' grade waste" pursuant to Agreed Order (Case No. 2006-15827) which "shall remain in effect until [VIM] is able to remove all 'C' grade waste." In other words, IDEM's Office of Air Quality (OAQ) has issued a renewal Permit that allows VIM to engage in solid waste activities that IDEM's OLQ has determined are illegal and which allows for the circumvention and violation of

federal laws and regulations.

19. 40 C.F.R. § 257.3-7 prohibits "open burning" of solid waste defined as "the combustion of solid waste without (1) control of combustion air to maintain adequate temperature for efficient combustion, (2) containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion, and (3) control of the emission of the combustion products."

20. The massive solid waste piles at the VIM Site generate smoke as a result of smoldering combustion of solid waste which constitutes open burning in violation of 40 C.F.R. § 257.3-7. IDEM has observed and is aware that smoke emanates from the waste piles. For example, IDEM's compliance inspection report of October 2, 2008 states:

The tour of the operations at the covered "C" pile waste area revealed the facility to be unearthing "C" pile wastes and shifting (shaking) the wastes into three (3) size types; fines (< three inches in size), medium sizes (~three to six inches in size) and larger pieces (> six inches in size). A large crane was on top of the buried "C" pile waste, excavating the wastes from the upper portion of the pile. While the crane was unearthing the "C grade" waste and also while the wastes were being shifted (shakened), the waste was observed emitting a lot of smoke, from internal combustion within the pile.

21. VIM's prior Title V Permit contained conditions for inspection of VIM's outdoor waste piles for signs of spontaneous combustion and required documentation of all inspections pursuant to an Agreed Order relative to VIM's violations of these conditions. In response to comments, IDEM states that these conditions were removed from the renewal Permit because they do not meet the definition of "applicable requirement" as defined by 326 IAC 2-7-1(6) and the Agreed Order is enforceable separate from the permit and need not be included in the operating permit.

22. 40 C.F.R. § 257.3-7 is clearly an applicable requirement. Moreover, IDEM is required to mandate submission of a schedule of compliance to address these past violations and include it in the Title V permit renewal. CAA § 503(b)(1); 40 CFR 70.5(c)(8)(iii)(C).

23. The renewal Permit not only allows VIM to grind and process regulated solid waste in violation of federal and state law but also contains no limits, other than wet suppression for fugitive dust, for potential emissions of criteria or hazardous air pollutants. Indeed, there has been no PTE analysis criteria pollutants and/or hazardous air pollutants that may be released from grinding, processing and storing this regulated waste.

### **The Draft Permit Fails to Protect Public Health**

24. 326 IAC 2-1.1-5 prohibits the issuance of a permit that is not "protective of public health." This prohibition is *independent* of the requirement that permits ensure compliance with ambient air quality standards, PSD increments, and all other applicable air pollution control rules.

25. VIM's previous Title V permit required VIM to grind and screen all "A", "B" and "C" material indoors "using a baghouse for control of particulate matter emissions and exhausting to one [of three designated] stack[s]." Outdoor operations were conspicuously limited to grinding and screening of "recently live" wood only and "controlling emissions of fugitive particles through means described in the Fugitive Dust Control Plan."

26. IDEM acknowledges in the renewal Permit's TSD Addendum that the "recently live" restriction was "intended to reduce the amount of fugitive dust created as a result of [VIM's} outdoor grinding operations." Fugitive Dust emissions include emissions of PM, PM<sub>10</sub>, and harmful PM<sub>2.5</sub>.

27. The public health threat associated with PM<sub>2.5</sub> is well known and documented. USEPA warns that fine particles are believed to pose the "largest health risks" due to their ability to lodge deeply in the lungs.<sup>1</sup> PM<sub>2.5</sub> is associated with aggravation of respiratory and cardiovascular disease, lung disease, asthma attacks, cardiovascular problems such as heart attack and arrhythmia, and even premature death.<sup>2</sup> Children and the elderly are particularly susceptible to the negative impacts of PM<sub>2.5</sub>, the

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<sup>1</sup> USEPA, *PM<sub>2.5</sub> NAAQS Implementation*, available at [www.epa.gov/ttnnaqs/pm/pm25\\_index.html](http://www.epa.gov/ttnnaqs/pm/pm25_index.html).

<sup>2</sup> *Id.*



former because their immune and respiratory systems are still developing and the latter because their systems are weak and compromised. Since PM<sub>2.5</sub> clearly poses a threat to public health, the Permit must require whatever measures are necessary to mitigate that threat. Simply requiring wet suppression of fugitive dust while grinding B and C material outdoors is not adequate.

28. Undermining protection of public health the Permit alters or completely removes the following conditions and limits on facility and emissions units operations and fugitive dust controls that were required under VIM's prior permit:

- a. Section D.1.7 removes the requirement for monthly baghouse inspections.
- b. Sections D.1.9, Section D.1.10(d), D.2.7 and D.2.8(c) requiring inspections of all outdoor storage piles for signs of spontaneous combustion and recordkeeping of all inspections have been omitted from the draft permit. This is particularly troubling in light of the June, 2007 explosion and fire that resulted from failure to inspect and maintain baghouse equipment. Furthermore, all references for the need to comply with previous AOs relative to these requirements must be included in the Permit just as they were included in VIM's prior permit.
- c. Section D.2.4 and the Fugitive Dust Control Plan allow grinding of "A" and "B" material outdoors whereas Section D.2.4 and Fugitive Dust Control Plan of the prior permit expressly limited outdoor grinding to "recently live" wood only. Clearly, this limit was imposed to control particulate matter emissions as "recently live" wood has a higher moisture content. Furthermore, emissions calculations and limits in the Permit do not address the increased PM/PM<sub>10</sub> (and PM<sub>2.5</sub>) emissions from outdoor grinding of "A" and "B" materials.
- d. The TSD states that VIM is allowed to "temporarily shred 'C' grade waste" outdoors using the Mobark grinder "until the source is able to remove all 'C' grade waste" with no corresponding limits or conditions placed *anywhere* in the Permit to control those emissions. Specifically, the Permit's Section D.2.1 or D.2.2 do not address emissions from outdoor grinding of "C" pile known to contain *"scrap wood veneers from the manufacture of mobile homes . . . [and] plastic, steel, glass, carpet and drywall."*

29. Uncontrolled emissions released from grinding of this regulated solid waste outdoors poses a significant health risk to residents known to live in exceedingly close proximity to the facility. However, the Permit's TSD which is unenforceable, indicates that VIM is allowed to grind "C" material under the terms of the January 2007 Agreed Order "until the source is able to remove all C grade

waste." There has been no demonstration that this outdoor grinding constitutes "proper disposal" of the "C" grade solid waste or that the activity will emit less than 10 tons per year of a single HAP and less than 25 tons per year of a combination of HAPs thereby requiring compliance with NESHAPs. 326 IAC 2-4.1. Indeed, the Permit wholly fails to regulate emissions from this dangerous outdoor activity *at all* or require any testing, monitoring or recordkeeping to assure that emissions releases comply with CAA requirements and protect public health.

30. The Permit's TSD and Addendum reveal the ongoing, severe, adverse impact VIM's operations have had and continue to have on the surrounding community.<sup>3</sup> VIM has a long, well-documented history of wilful non-compliance with air permit limits and solid waste management laws. Thus, to the extent the foregoing altered or omitted conditions provide greater flexibility and reliance on VIM's good faith or judgment they should not be allowed. To the extent they are insufficient to protect public health they are deficient, impermissible and a violation of Indiana law.

#### **Use of PM10 As a Surrogate for for PM2.5 Violates Indiana and Federal Law**

31. The Permit impermissibly substitutes regulation of PM10 for PM2.5.<sup>4</sup> VIM's facility is located in an air quality control region designated as attainment/unclassifiable for fine particulate matter (PM2.5).<sup>5</sup> As a result of formal rulemaking by USEPA, the designation determines the applicable NSR program unless and until USEPA redesignates the area or the designation is overturned by a court of law. *See* 326 IAC 2-3-2 (nonattainment NSR); 326 IAC 2-2-2 (PSD); 40 CFR 81.300 (revision procedure for designations). Thus, VIM's permit must comply with the attainment PSD rules for PM2.5.

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<sup>3</sup> Reference is made to numerous comments and complaints noted in the Addendum from neighboring residents indicating that they are suffering from asthma-like symptoms, bronchitis, strange skin rashes, nose bleeds, wheezing, coughing, sore throats, headaches, burning eyes, burning throats - symptoms they did not experience prior to VIM's operations in their neighborhood.

<sup>4</sup> TSD at 4 ("US EPA has not yet established the requirements for PSD. . .for PM2.5 emissions. Therefore, until the U.S. EPA adopts specific provisions for PSD review for PM2.5 emissions, it has directed states to regulate PM10 emissions as a surrogate for PM2.5 emissions.")

<sup>5</sup> TSD at 4.

32. Since 1997, USEPA has distinguished PM<sub>2.5</sub> from PM<sub>10</sub>, most importantly by setting different NAAQS for each. 62 Fed.Reg. 38652 (July 18, 1997); 40 CFR 50.6 (PM<sub>10</sub>); 40 CFR 50.13 (PM<sub>2.5</sub>). Furthermore, USEPA has expressly recognized that fine particles, or those less than 2.5 micrometers in diameter are "very different" from coarse particles in terms of sources, characteristics, and potential health effects. USEPA Fact Sheet: National Air quality Standards for Fine Particles: Guidance for Designating Areas (July 17, 1997); *see also* USEPA, Clean Air Fine Particle Implementation Rule, 72 Fed. Reg. 20586, 20589 (April 25, 2007) ("PM<sub>2.5</sub> also differs from PM<sub>10</sub> in terms of atmospheric dispersion characteristics, chemical composition, and contribution from regional transport."). These differences mean that states will have to "evaluate different sources for controls, to consider controls of one or more precursors in addition to direct PM emissions, and to adopt different control strategies" in order to implement the PM<sub>2.5</sub> NAAQS compared to the PM<sub>10</sub> NAAQS. *See* Final PM<sub>2.5</sub> Implementation Rule, 72 Fed.Reg. 20586, 20589 (April 25, 2007). Both the federal and Indiana PSD program treat PM<sub>2.5</sub> and PM<sub>10</sub> separately in terms of attainment designations in relation to these separate standards. Grounding these needs is the engineering reality that controls designed for capture of PM<sub>10</sub> (consisting primarily of filterable particles) do not effectively capture PM<sub>2.5</sub> (made up on large part of condensable particles).

33. Indiana law prohibits IDEM from issuing a permit unless the permit is protective of the public health and will not cause or contribute to a violation of the NAAQS. 326 IAC 2-1.1-5(a)(1) and (4). As stated previously, USEPA has issued separate NAAQS for PM<sub>2.5</sub> and PM<sub>10</sub> based on the differences between them. IDEM cannot rely on USEPA guidance that does not have the force of law where, as here, that guidance is in conflict with statutory and regulatory requirements. *See e.g. Appalachian Power Co. v. E.P.A.*, 208 F.3d 1015, 1020 (D.C. Cir. 2000). Furthermore, USEPA's recommended use of PM<sub>10</sub> as a surrogate for PM<sub>2.5</sub> expired by its own terms when USEPA published the final PM<sub>2.5</sub> implementation rule in September 2007. USEPA, Proposed Rule to Implement the Fine Particle

NAAQS, 70 Fed. Reg. 65984 and 66052 (Nov. 1, 2005)(stating "Upon promulgation of this rule, *EPA will no longer accept the use of PM10 and as surrogate for PM2.5.*"). Therefore, IDEM must determine directly whether VIM's operations will comply with NAAQS for PM2.5 and include permit limits accordingly.

**IDEM Failed to Require and Include a Schedule of Compliance for Past Violations**

34. TSDs and Addendums to VIM's prior air permit from August, 2000 to the present (including Title V source and permit modifications) document extensive, ongoing and repeated violations of the CAA. Moreover, IDEM has received weekly complaints from neighbors with photographs evidencing VIM's failure to use water for dust suppression, allowing smoke and fugitive dust to cross property lines, outdoor grinding and processing when wind-speeds are in excess of ten (10) miles per hour and other CAA violations. None of these violations or schedules of compliance are addressed and included in the Permit.

35. The renewal Permit must include a schedule of compliance to address these violations. CAA § 503(b)(1) requires that permit applicants "submit with the permit application a compliance plan describing how the source will comply with *all* requirements under this chapter." 40 CFR 70.5(c)(8)(iii) (C), promulgated pursuant to this provision, states that a permit application must include:

A schedule of compliance for sources that are not in compliance with *all* applicable requirements at the time of permit issuance. Such a schedule shall include a schedule of remedial measures, including an *enforceable sequence of actions with milestones*, leading to compliance with any applicable requirements the source will be in noncompliance at the time of permit issuance. This compliance schedule shall resemble and be *at least as stringent as that contained in any judicial consent decree or administrative order* to which the source is subject. (emphasis added).

36. In *New York Public Interest Research Group v. Johnson*, 427 F.3d 172 (2nd Cir. 2005), the court made clear that where noncompliance has been demonstrated, agencies are obligated under the CAA to require a schedule of compliance in a Title V permit regardless of whether there has been an

adjudicated determination of liability. None of the aforementioned violations have been addressed in VIM' renewal Permit.

WHEREFORE, Petitioners request that the Office of Environmental Adjudication grant the following relief:

- a. Vacate the decision of IDEM to issue the Permit;
- b. Order IDEM not to re-issue the Permit until and unless the renewal Permit is revised to eliminate all provisions that allow for processing, grinding, handling and/or storing of regulated solid waste and include any and all appropriate limits and requirements consistent with this Petition; and
- c. Order all additional relief as the OEA deems appropriate and allowed by law.

**Petition for Stay of Effectiveness**

1. Petitioners hereby reallege and incorporate by reference paragraphs 1 through 36 as if fully set forth herein.
2. According to a Memorandum from Matthew Stuckey, Chief, Permits Branch, Office of Air Quality, dated April 8, 2009, the Permit is effective immediately, unless a petition for stay of effectiveness is filed and granted according to IC 13-15-6-3.
3. Petitioners will be adversely affected by air pollution emitted by VIM authorized by this renewal Permit. Petitioners work, live, and recreate in the area affected by air pollutant emissions from VIM's operations. Petitioners are concerned that continued air pollution emissions from VIM will threaten their health, decrease their property values, and limit their ability to enjoy the natural environment. Petitioners and their family members will be exposed to and run the risk of respiratory and cardiovascular diseases as a result of air pollution emissions from VIM's operations which will further threaten their health.

4. Petitioners maintain health insurance policies and pay premiums. The air pollution caused by VIM's operations will increase the incidence of illness and disease in the surrounding community, increasing health insurance premiums and the cost of medical care.

5. The purpose of Indiana's air pollution control laws is "to maintain the purity of the air resource of Indiana, which shall be consistent with protection of the public health and welfare and the public enjoyment of the air resource, physical property and other resources, flora and fauna, maximum employment, and full industrial development of Indiana. The air pollution control board and the department shall safeguard the air resource through the prevention, abatement, and control of air pollution by all practical and economically feasible methods." IC § 13-17-1. As set out above, the renewal Permit is inconsistent with this intent and purpose, thus threatening the health and welfare of Petitioners.

6. In their comments on the draft Permit, Petitioners submitted extensive information regarding air pollutants that are and will continue to be emitted by VIM's operations. These emissions pose significant health and welfare risks to Petitioners. The Commissioner is not allowed to issue permits that "are not protective of public health." 326 IAC 2-1.1-5.

7. As explained herein, the renewal Permit allows VIM to emit large quantities of particulate matter, potentially large enough to significantly exceed the PSD thresholds, without requiring the necessary analysis and emission controls.

8. Particulate matter is a zero-threshold pollutant. In other words, any amount will have an adverse effect.<sup>6</sup> The inhalation of particulate matter, particularly the smallest particles, causes a variety of health effects, including premature mortality, aggravation of respiratory (e.g., cough, shortness of

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<sup>6</sup> Pope CA, 3rd, Burnett RT, et al. 2002. Lung cancer, cardiopulmonary mortality, and long-term exposure to fine particulate air pollution. *Jama* 287(9):1132-41; Pope CA, 3rd, Thun MJ, et al. 1995. Particulate air pollution as a predictor of mortality in a prospective study of U.S. adults. *Am. J. Respir. Crit. Care Med.* 151(3 Pt 1):669-74; Woodruff TJ, Grillo J, et al. 1997. The relationship between selected causes of postneonatal infant mortality and particulate air pollution in the United States. *Environ. Health Perspect.* 105(6):608-12; Krewski D, Burnett R, et al. 2000. *Particle Epidemiology Reanalysis Project. Part II: Sensitivity Analyses*. Cambridge, MA: Health Effects Institute.

breath, wheezing, bronchitis, asthma attacks) and cardiovascular disease, declines in lung function, changes to lung tissues and structure, altered respiratory defense mechanisms, and cancer, among others.

9. The renewal Permit allows VIM to grind and process "B" grade material. The renewal Permit's TSD states that VIM is allowed to temporarily shred "C" grade waste outdoors until VIM is able to remove the "C" grade waste. According to IDEM records, "B" Waste is a mixture of wood scraps containing laminated wood and plywood collected from various manufacturers in the area that is ground up to make animal bedding; and "C" waste is "B" Waste that is no longer suitable for use in making animal bedding. Allowing VIM to grind, shred and process "B" and "C" grade materials violates federal and state solid waste management laws and IDEM OLQ directives to cease and desist such activity.

10. Other than wet suppression of fugitive dust there are no corresponding limits or conditions placed anywhere in the Permit to control emissions from grinding, processing and storing "B" and "C" grade material and there is no PTE analysis for those emissions.

11. Grinding, processing and storing of wood waste is known to release significant wood dust into the air with the following implications for human health:

Eyes: wood dust may cause irritation to the eyes. Symptoms can include irritation, redness, scratching of the cornea and tearing.

Skin: Prolonged contact with treated wood dust may cause irritation to the skin, and in extreme circumstances may cause chemical burns. Any wood dust may cause irritation to the skin . . . Some wood species and their dusts may contain natural toxins which may cause dermatitis or allergic reactions in sensitized individuals.

Inhalation: Wood dust is irritating to the nose, throat, and lungs. Symptoms may include nasal dryness, deposits or obstructions in the nasal passages, coughing, sneezing, dryness and soariness of the throat and sinuses, hoarseness and wheezing. Prolonged or repeated inhalation of woods dusts may cause respiratory irritation, recurrent bronchitis, and prolonged colds. Some species may cause allergic respiratory reactions with asthma-like symptoms in sensitized individuals. Prolonged exposure has been reported

to be associated with nasal and paranasal cancer.<sup>7</sup>

12. Petitioners respectfully request that the effectiveness of the Permit and all terms and conditions therein be stayed pending completion of the administrative review.

13. The Petitioners contend that IDEM should not have issued the Permit, and have a strong likelihood of success on the merits for the reasons specified in this Petition.

14. For reasons further specified in this petition, Petitioners contend that the deficiencies of the Permit as issued pose a threat to the public safety and welfare.

15. For reasons further specified in this petition, the Petitioners and the public will suffer irreparable harm if the proceedings are not stayed. The nature of the existing and threatened injury to Petitioners is such that it outweighs any economic harm to VIM that may result from a stay of the Permit.

WHEREFORE, Petitioners respectfully request that the effectiveness of the Permit and all terms and conditions therein be stayed pending completion of administrative review.

Respectfully submitted,

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219/464-0104; fax: 219/464-0115

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<sup>7</sup> Material Safety Data Sheet for ProWood ACQ, Universal Forst Products, Inc. (May 1, 2006).



### **CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Petition for Administrative Review has been served upon the following individuals and parties of record or party by United States mail postage prepaid, this 29th day of April, 2009 and that the Indiana Office of Environmental Adjudication was served by Certified Mail and facsimile this date of the Petition:

The Indiana Office of Environmental  
Adjudication  
Attn: Executive Secretary  
100 North Senate Avenue  
Indiana Government Center North  
Room 1049  
Indianapolis, Indiana 46204

Mr. Thomas W. Easterly, Commissioner  
Indiana Department of Environmental  
Management  
Indiana Government Center-North  
100 N. Senate Ave.  
Indianapolis, IN 46204

VIM Recycling, Inc.  
29861 Old U.S. Highway 33  
Elkhart, IN 46516  
Responsible Official: President, Kenneth R.  
Will

By: \_\_\_\_\_  
Kim E. Ferraro, Attorney No. 27102-64  
LEGAL ENVIRONMENTAL AID FOUNDATION